

REMARKS

The Examiner provides a number of rejections and we list them here in the order in which they are addressed:

I. Anticipation

- A. Claims 1 and 3-4 are rejected under 35 USC §102(b) or (e) as allegedly being anticipated by Tokoro H., United States Patent No. 5,080,895.
- B. Claim 1 is rejected under 35 USC §102(b) as allegedly being anticipated by Stolle *et al.*, United States Patent No. 4,748,018.

II. Obviousness-Type Double Patenting

- A. Claims 1-4 are rejected for double-patenting over claims 1-15 by Carroll *et al.*, United States Patent No. 6,656,468.
- B. Claims 1-4 are rejected for double-patenting over claims 1-10 by Carroll *et al.*, United States Patent No. 5,599,539.
- C. Claims 1 and 3-4 are rejected for double-patenting over claims 1-16 by Williams *et al.*, United States Patent No. 5,762,934.

I. Claims 1-4 Are Not Anticipated

As the Examiner is well aware, a single reference must disclose each limitation of a claim in order for that reference to anticipate the claim. *Atlas Powder Co. v. E.I. du Pont De Nemours & Co.*, 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984). This criterion is not met with either the Tokoro or Stolle *et al.* references.

The Applicants disagree with the Examiner that either Tokoro or Stolle *et al.* anticipate the pending claims. Nonetheless, without acquiescing to the Examiner's argument but to further the prosecution, and hereby expressly reserving the right to prosecute the original (or similar) claims, Applicants have amended Claim 1 to recite *Clostridium perfringens* antibodies. Claims 2 and 3 contain editorial amendments to improve claim clarity. This amendment is made not to acquiesce to the Examiner's argument but only to further the Applicants' business interests, better define one embodiment and expedite the prosecution of this application.

Since neither Tokoro or Stolle *et al.* teach *Clostridium perfringens* the Applicants respectfully request the Examiner withdraw these rejections.

II. Double Patenting

A. Carroll *et al.*, US Pat. No. 6,656,468

The Applicants have provided a Terminal Disclaimer to the '468 patent. Applicants respectfully request the Examiner withdraw this rejection

B. Carroll *et al.*, US Pat. No. 5,599,539

The Applicants respectfully request the Examiner reconsider a Terminal Disclaimer to the '539 patent because the '539 patent claims are directed to *Clostridium botulinum*.

C. Williams *et al.*, US Pat. No. 5,762,934

The Applicants respectfully request the Examiner reconsider a Terminal Disclaimer to the '934 patent because the '934 patent claims are directed to *Clostridium difficile*.

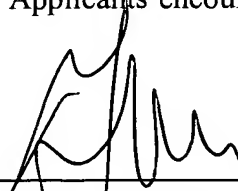
III. The Specification Contains A Priority Statement

The Applicants have updated the existing priority statement to reflect the issuance of United States Patent Application 08/810,908 (*supra*).

CONCLUSION

The Applicants believe that the arguments and claim amendments set forth above traverse the Examiner's rejections and, therefore, request that all grounds for rejection be withdrawn for the reasons set above. Should the Examiner believe that a telephone interview would aid in the prosecution of this application, the Applicants encourage the Examiner to call the undersigned collect at 617.984.0616.

Dated: December 14, 2004



Peter G. Carroll
Registration No. 32,837

MEDLEN & CARROLL, LLP
101 Howard Street, Suite 350
San Francisco, California 94105
617.984.0616